IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR Nos. 154 and 155 of 1995
Date of decision:15.11.2006

The Commissioner of Income Tax, Patiala

....Petitioner

versus

M/s. Mount Shivalik Breweries Limited, Bhankarpur

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. NL Sharda, Advocate, for the revenue.
Mr. SK Mukhi, Advocate for the assessee.

JUDGMENT:

Following questions of law have been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal) arising out of its order dated 16.6.1994 in ITA Nos.407, 538 and 828/Chandi/89, for the assessment years 1984-85 and 1985-86:-

Questions in RA No.237/Chandi/94

"1. Whether, on the facts and in the circumstances of the case, the ITAT was right in law in allowing rent paid for hiring guest house holding that the expenditure is covered by Income tax Act, 1961?"

2. Whether, on the facts and in the circumstances of the case, the ITAT was right in law in upholding the order of CIT(A) directing the Assessing Officer to allow sales tax liability of Rs.3,21,680/- if it was paid before the due date of filing the return under section 139(1) for assessment year 1984-85 when first proviso to section 43B of the Act was inserted w.e.f 1.4.1988?"

3. Whether on the facts and in the circumstances of the case, the ITAT was right in law in upholding the order of CIT(A) deleting the disallowance made under section 37 (3A) in respect of expenses incurred on Motor cars repairs holding that the expenditure was covered under section 31 and not hit by the provisions of section 37 (3A)?

Question in RA No.238/chandi/94

"Whether, on the facts and in the circumstances of the case, the ITAT was right in law in upholding the order of the ld. CIT(A) deleting the disallowance made under section 37(3A) in respect of expenses incurred on Motor car repairs and insurance holding that the expenditure was covered under section 31 and not hit by the provisions of section 37(3A)?

We have heard learned counsel for the parties and perused the findings recorded.

We find that Question Nos.1 and 3 in RA No.237/Chandi/94 and the only question in RA No.238/Chandi/94 are covered against the assessee by judgment of the Hon'ble Supreme Court in **Britannia Industries Limited v. CIT and another**, (2005) 278 ITR 546, which has been also followed in the case of the assessee for the assessment year 1981-82 vide our judgment dated 15.9.2006 in ITR No.62 of 1991, **M/s Mount Shivalik Breweries Limited, Village Bhankarpur, District Patiala v. The CIT, Patiala).**

We find that question No.2 in RA No.237/chandi/94 is covered against the revenue and in favour of the assessee, in view of judgment of the Hon'ble Supreme Court in **Allied Motors (P) Limited v. CIT,** (1997) 224 ITR 677.

Accordingly, question Nos.1 and 3 in RA no.237/Chandi/94 and the only question in RA No.238/chandi/94 are answered in favour of the revenue and against the assessee, while question No.2 in RA No.237/Chandi/94 is answered in favour of the assessee and against the revenue.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 15, 2006 (Rajesh Bindal)
'gs' Judge